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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-218

RALPH GROUNDS, HENRY HITCH, ET AL.,
(Landowners), *Petitioners,*

v.

NORTHERN NATURAL GAS COMPANY, ET AL.,
(Helex Group),

and

SOCONY MOBIL OIL CO., INC. (MOBIL OIL CORPORATION substituted), ET AL., (Lessee-Producers),
Respondents.

REPLY OF RESPONDENTS PANHANDLE EASTERN PIPE LINE COMPANY AND NATIONAL HELIUM CORPORATION TO LANDOWNERS' PETITION FOR REHEARING OF DENIAL OF PETITION FOR CERTIORARI

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January 13, 1972

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As requested by the Court, Panhandle Eastern Pipe Line Company ("Panhandle") and National Helium Corporation ("National Helium") hereby respond to the Landowners' Petition for Rehearing of Denial of

Petition for Certiorari. Respondents Panhandle and National Helium respectfully pray that said Petition for Rehearing be denied.

QUESTION PRESENTED

Whether a petition for certiorari filed more than 90 days after the entry of the judgments presented for review is untimely, where the issue petitioners seek to raise was fully adjudicated by those judgments and was not the subject matter of a timely petition for rehearing in the court below.

STATEMENT

In brief, a total of 88 appeals were taken by various parties from the decision of the District Court and its subsequent order as to costs in eight actions which it had consolidated for trial. The Court of Appeals consolidated the appeals for hearing and, on March 2, 1971, rendered its decision and entered judgments thereon.

The landowners' petition for certiorari, which the Court dismissed as untimely, sought to bring to this Court the landowners claim to title to the helium in gas streams sold to the Helex companies, a claim which had been rejected by both the District Court and the Court of Appeals. The landowners did not file a timely petition for rehearing in the Court of Appeals; a "Landowners' Motion for Leave to File Petition for Rehearing Out of Time and Landowners' Petition for Rehearing" was filed on June 8, 1971, and denied by the court below on the following day on the grounds that it was not timely.

The United States and members of the Helex group, including Panhandle and National Helium, filed timely

petitions for rehearing on other issues, which were denied by the court below on May 20, 1971. Members of the Helex group filed petitions for certiorari within 90 days of that date.* The landowners' petition for certiorari was filed on August 12, 1971, more than 90 days after the entry of the judgments below but less than 90 days from the date of denial of the petitions for rehearing filed by the other parties involved.

ARGUMENT

The basic issue raised by the landowners' petition for certiorari involves passage of title to the helium constituent of the helium-bearing natural gas involved in this litigation. The trial court held that the leases granted by landowners conveyed title to the helium constituent from the landowners to the producers and that the gas purchase contracts entered into between the producers and the pipelines conveyed title from the producers to the pipelines. The landowners specifically appealed this holding to the court below.

The Court of Appeals affirmed on the question of passage of title, agreeing with the District Court that title to the helium constituent passed under the leases and again under the gas purchase contracts. No action was taken by the landowners to challenge the adverse holding or preserve the issue until the filing of their admittedly untimely motion for leave to file a petition for rehearing, which motion the court below promptly denied. That attempt to file an untimely petition for rehearing relating to the question of passage of title, which petition was not entertained or con-

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* *Panhandle Eastern Pipe Line Company, et al.* v. *Mobil Oil Corporation, et al.*, No. 71-243; *Northern Natural Gas Company, et al.* v. *Mobil Oil Corporation, et al.*, No. 71-238.

sidered on the merits, in no way extended the time for filing a petition for certiorari on the point. *E.g., Bowman* v. *Loperena,* 311 U.S. 262, 266 (1940); *Gypsy Oil Co.* v. *Escoe,* 275 U.S. 498 (1927).

Since the landowners' petition for certiorari was admittedly filed more than 90 days after the entry of the judgments below, it is incumbent upon landowners to make two showings to meet their burden of affirmatively establishing jurisdiction in this Court. First, it must be demonstrated that the timely petitions for rehearing by other parties served to extend the time in which landowners could petition for certiorari. Assuming *arguendo* that the answer to that threshold question is in the affirmative, at least as to the issues raised by the timely petitions for rehearing, the landowners must then demonstrate that their petition for certiorari may raise an issue which was neither the subject of the petitions for rehearing filed by the other parties nor "inextricably linked" therewith. See *United States* v. *Adams,* 383 U.S. 39, 41-42 (1966).

The landowners fail to present authority to satisfy their burden in either respect. Instead, they apparently rely on a presumption that an earlier filing by them would have resulted in placing "only a portion of the controversy" before the Court (Petition for Rehearing, 5). This argument lacks substance, for the landowners did in fact file in advance of the other petitioners and they did in fact present less than all the issues. Moreover, although the Court appears not to have dealt with the precise question presented, the specter of "piecemeal" review has been considered by it on a number of occasions. Even assuming that the filing of an earlier petition by the landowners could in some way have resulted in fragmenting the issues,

there are other considerations which have been found to override that form of objection.

Thus, in *Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U.S. 206 (1952), involving post-decision proceedings in somewhat similar circumstances, the Court said (pp. 211, 213-214):

> . . . we cannot hold that the time for filing a petition for certiorari was enlarged simply because [a post-judgment memorandum] may have prompted the court below to take some further action which had no effect on the merits of the decision that we are now asked to review in the petition for certiorari.
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> Thus, while we do not mean to encourage applications for piecemeal review by today's decision, we do mean to encourage applicants to this Court to take heed of another principle—the principle that litigation must at some definite point be brought to an end. It is a principle reflected in the statutes which limit our appellate jurisdiction to those cases where review is sought within a prescribed period. *Those statutes are not to be applied so as to permit a tolling of their time limitations because some event occurred in the lower court after judgment was rendered which is of no import to the matters to be dealt with on review* (footnote omitted, emphasis added).

The "matters to be dealt with on review" of landowners' petition for certiorari relate to passage of title to the helium constituent under local law, leases and gas purchase contracts. This issue was not before the court below on the timely petitions for rehearing and any further action by the court below on those petitions would have had no effect on the merits of the issue which is sought to be raised by landowners

here. Thus, the title issue was fully adjudicated insofar as the lower court was concerned and its judgments were "final" on that issue for purposes of review. Cf. *Department of Banking* v. *Pink,* 317 U.S. 264, 268 (1943).

Although this litigation is of such far-reaching significance as to warrant consideration by this Court, it is by no means clear that the passage of title question with which the landowners are concerned is independently deserving of further review. The landowners are respondents to the related petitions for certiorari filed by members of the Helex group and, if those petitions are granted, will be free to participate fully in the issues which were timely raised.

The Petition for Rehearing should be denied for the reason that landowners have not affirmatively demonstrated that jurisdiction exists.

Respectfully submitted,

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